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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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KENNETH J. SCHIRO,

Petitioner,

3:17-cv-00625-RCJ-VPC

v.

RENEE BAKER et al.,

**ORDER**

Respondents.

This is a habeas corpus action under 28 U.S.C. § 2254. Petitioner Kenneth Schiro has responded to the Court’s order to show cause why the Petition should not be dismissed as untimely. Petitioner challenges disciplinary sanctions issued against him in state prison on July 9, 2014. (Pet. ¶ 2, ECF No. 1-1). The remittitur from the Nevada Supreme Court upon which Petitioner relies to establish the date from which the one-year limitations period ran under § 2244(d)(1)(A) issued on September 20, 2016, but the present Petition was signed over a year later, on October 10, 2017, and it cannot have been mailed before that date. (Remittitur in Nev. Sup. Ct. Case No. 70324, ECF No. 5, at 5; Pet. 9). Nor does Petitioner make any showing as to tolling. Petitioner notes he filed a previous § 2254 petition on September 10, 2017. But Judge Du dismissed that petition without prejudice for failure to submit the filing fee or an IFP application. (Order, ECF No. 3 in Case No. 3:17-cv-560). Even assuming: (1) the petition related to the present claims; and (2) the limitations period was tolled for the five days the petition was pending, the present Petition is still untimely by over two weeks. Accordingly, Petitioner has not shown cause why the Petition should not be dismissed for untimeliness.

1 **CONCLUSION**


2 IT IS HEREBY ORDERED that the Clerk shall DETACH and FILE the Petition (ECF No.  
3 1-1).

4 IT IS FURTHER ORDERED that the Petition (ECF No. 1-1) is DISMISSED with  
5 prejudice as untimely.

6 IT IS FURTHER ORDERED that a certificate of appealability is DENIED.

7 IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

8 DATED: This 6<sup>th</sup> day of November, 2018.

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12 ROBERT C. JONES  
13 United States District Judge  
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